The Speeches of Daniel Webster

SELECTED BY

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Embracing his acknowledged masterpieces in each department of the great field of intellectual action

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PREFACE.

It has been my intention in this volume to give, not only Mr. Webster's acknowledged master-pieces, but his master-piece in each department of the great field of intellectual action which he occupied in life; and, though there are other speeches, which would compare favorably with some that have found a place here, there is none, it is believed, which could be regarded as superior, in any of the divisions, to the one selected.

In several of the great speeches not included in this collection, there are single passages, which, perhaps, could scarcely be surpassed, if some of them could be equaled, by any passages found in the speeches included in this volume; but, in making a collection of his master-pieces, the object of search is not single passages, but entire performances; and, taking this as the standard, there is no room for doubt that the volume here presented to the reader contains the ablest and most eloquent productions bequeathed to the world by the genius of Daniel Webster. They are the productions, which, it is presumed, every gentleman will feel it necessary to have about him; and it is equally presumable that no enlightened parent, no true-hearted American citizen, will wish to have his sons and daughters grow up without becoming more or less familiar with those master efforts of the greatest man, intellectually, which our common country has yet given us.

We have heard much in days passed, and may hear more in days to come, of a dissolution of our national confederacy. Rank doctrines are no doubt at work in different sections of the Union, and in the several strata of society. While Mr. Webster lived, he was acknowledged as the ablest supporter and defender of the constitution as it is, and of the country as it is. From one end of the country to the other, from the rocky shores of the Atlantic to the peaceful waters of the Pacific, his name, his voice, his authority, were everywhere known and recognized as the great bulwark of our American nationality, of our American independence, of the integrity and perpetuity of our great and united American republic. At the north, and at the south, from the east to the farthest west, he was known and felt in this high capacity. But he was thus known, not by virtue of any office he ever filled; for he never rose to an office which made him the representative of more than one state in the confederacy. He was known as such, indeed, not so much as a senator from the patriotic state of Massachusetts, as for his personal ability and efforts, out of congress as well as in it, from the day his name became connected with the history of the country. He was so known, in a word, for the speeches he made, at different times, as the first of American orators devoted to the defence of the institutions and of the existence of the nation; and these speeches, which are destined to last from generation to generation, constitute the body of this volume. Since the living voice, then, is silent forever in the grave, shall not the immortal utterances of that voice be welcome throughout the whole country, east, west, north, south, as the best creations of American oratorical genius, and as the most salutary instructions and lessons to the entire American brotherhood? Though born in one section of the country, and settled in after life in another section, he belonged to all sections equally,

to the whole people of the republic; and his name and fame, and his immortal works, should be equally welcome, and will be welcome, in every portion of the Union.

It will be a curious and instructive exercise for the reader, in the perusal of the several speeches, to look at the dates of their publication, and thus note the progress of Mr. Webster's mind toward that wonderful development which it finally attained; and it will be particularly noticed, that between the times of his Dartmouth College argument and of his reply to Hayne, which mark the two extremes of the most brilliant period of his life, there is a space of only twelve years, which were the years intervening between the *thirty-sixth* and the *forty-eighth* year of his age.

It is quite evident that Mr. Webster matured rather slowly; that his efforts made before the age of fifty were his most popular because the most impassioned efforts; but that his productions dated beyond the age of fifty, though less fiery, are generally more indicative of his unsurpassed abilities as a man of deep, penetrating, far-reaching, and comprehensive mind. His mind, indeed, seemed to grow clearer as he advanced in years; and the very latest speeches, though not so striking to superficial hearers, will be regarded hereafter, by close and competent readers, as the most finished of all the productions of his tongue and pen.

One result, it is to be earnestly hoped, will not fail to follow a general circulation of these master-pieces among the generous youth of Mr. Webster's native land. It is to be hoped that his style of elocution, calm, slow dignified, natural, unambitious, and yet direct and powerful, will take the place of that showy, flowery, flashy, fitful and boisterous sort of speaking, which seems to be becoming too common, which so breaks down the health of the speaker, and which is nevertheless most likely to

strike the feelings and corrupt the judgment of the young. Let me here say plainly, that, having heard Mr. Webster speak very frequently, on almost every variety of occasion, I have never heard him, even when most excited, raise his voice higher, or sink it lower, or utter his words more rapidly than he could do consistently with the most perfect ease, and with the utmost dignity of movement. He never played the orator. He never seemed to be making any effort. What he had to say he said as easily, as naturally, and yet as forcibly as possible, with such a voice as he used in common conversation, only elevated and strengthened to meet the demands of his large audiences. So intent did he seem to be, so intent he certainly was, in making his hearers see and feel as he did, in relation to the subject of the hour, that no one thought of his manner, or whether he had any manner, till the speech was over. That is oratory, true oratory; and it is to be hoped that the more general distribution of these masterpieces will have the ultimate effect of making it the American standard of oratory from this age to all future ages.

B. F. TEFFT.

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THE DARTMOUTH COLLEGE CASE.

DARTMOUTH COLLEGE VS. WOODWARD.*

Argument in the Case of the Trustees of Dartmouth College *vs.* Woodward, before the Supreme Court of the United States, on the 10th day of March, 1818.

The general question is, whether the acts of the 27th of June, and of the 18th and 26th of December, 1816, are valid and binding on the rights of the plaintiffs, *without their acceptance or assent.*

The charter of 1769 created and established a corporation, to consist of twelve persons, and no more; to be called the "Trustees of Dartmouth College." The preamble to the charter recites, that it is granted on the application and request of the Rev. Eleazer Wheelock: That Doctor Wheelock, about the year 1754, established a charity school, at his own expense, and on his own estate and plantation: That for several years, through the assistance of well-disposed persons in America, granted at his solicitation, he had clothed, maintained, and educated a number of native Indians, and employed

* Mr. Webster's argument in the Dartmouth College Case has stood, from the day of its delivery, as his universally acknowledged master-piece in this department of his public labors. The circumstances attending the delivery of the speech, with the origin and nature of the suit, have been given in the previous volume of this work. As the master-pieces are arranged in chronological order, that the growth of Mr. Webster's mind may be noted, the reader will observe that this speech was delivered in 1818, when the author of it was about *thirty-six* years of age. It is perhaps scarcely necessary to add, that Mr. Webster gained his case.

them afterwards as missionaries and schoolmasters among the savage tribes: That, his design promising to be useful, he had constituted the Rev. Mr. Whitaker to be his attorney, with power to solicit contributions, in England, for the further extension and carrying on of his undertaking; and that he had requested the Earl of Dartmouth, Baron Smith, Mr. Thornton, and other gentlemen, to receive such sums as might be contributed, in England, towards supporting his school, and to be trustees thereof for his charity; which these persons had agreed to do: And thereupon Doctor Wheelock had executed to them a deed of trust, in pursuance to such agreement between him and them, and, for divers good reasons, had referred it to these persons to determine the place in which the school should be finally established: And, to enable them to form a proper decision on this subject, had laid before them the several offers which had been made to him by the several governments in America, in order to induce him to settle and establish his school within the limits of such governments for their own emolument, and the increase of learning in their respective places, as well as for the furtherance of his general original design: And inasmuch as a number of the proprietors of lands in New Hampshire, animated by the example of the governor himself and others, and in consideration that, without any impediment to its original design, the school might be enlarged and improved, to promote learning among the English, and to supply ministers to the people of that province, had promised large tracts of land, provided the school should be established in that province, the persons before mentioned, having weighed the reasons in favor of the several places proposed, had given the preference to this province, and these offers: That Doctor Wheelock therefore represented the necessity of a legal incorporation, and proposed that certain gentlemen in America,

whom he had already named and appointed in his will to be trustees of his charity after his decease, should compose the corporation. Upon this recital, and in consideration of the laudable original design of Doctor Wheelock, and willing that the best means of education be established in New Hampshire, for the benefit of the province, the king granted the charter, by the advice of his provincial council.

The substance of the facts thus recited is, that Doctor Wheelock had founded a charity, on funds owned and procured by himself; that he was at that time the sole dispenser and sole administrator, as well as the legal owner, of these funds; that he had made his will, devising this property in trust, to continue the existence and uses of the school, and appointed trustees; that in this state of things, he had been invited to fix his school permanently in New Hampshire, and to extend the design of it to the education of the youth of that province; that before he removed his school, or accepted this invitation, which his friends in England had advised him to accept, he applied for a charter, to be granted, not to whomsoever the king or government of the province should please, but to such persons as he named and appointed, namely, the persons whom he had already appointed to be the future trustees of his charity by his will.

The charter, or letters patent, then proceed to create such a corporation, and to appoint twelve persons to constitute it, by the name of the "Trustees of Dartmouth College;" to have perpetual existence, as such corporation, and with power to hold and dispose of lands and goods, for the use of the college with all the ordinary powers of corporations. They are in their discretion to apply the funds and property of the college to the support of the president, tutors, ministers, and other officers of the college, and such missionaries and schoolmasters as they

may see fit to employ among the Indians. There are to be twelve trustees forever, *and no more;* and they are to have the right of filling vacancies occurring in their own body. The Rev. Mr. Wheelock is declared to be the founder of the college, and is, by the charter, appointed first president, with power to appoint a successor by his last will. All proper powers of government, superintendence, and visitation are vested in the trustees. They are to appoint and remove all officers at their discretion; to fix their salaries, and assign their duties; and to make all ordinances, orders, and laws for the government of the students. And to the end that the persons who had acted as depositaries of the contributions in England, and who had also been contributors themselves, might be satisfied of the good use of their contributions, the president was annually, or when required, to transmit to them an account of the progress of the institution and the disbursements of its funds, so long as they should continue to act in that trust. These letters patent are to be good and effectual, in law, *against the king, his heirs and successors forever*, without further grant or confirmation; and the trustees are to hold all and singular these privileges, advantages, liberties, and immunities to them and to their successors forever.

No funds are given to the college by this charter. A corporate existence and capacity are given to the trustees, with the privileges and immunities which have been mentioned, to enable the founder and his associates the better to manage the funds which they themselves had contributed, and such others as they might afterwards obtain.

After the institution thus created and constituted had existed, uninterruptedly and usefully, nearly fifty years, the legislature of New Hampshire passed the acts in question.

The first act makes the twelve trustees under the

charter, and nine other individuals, to be appointed by the governor and council, a corporation, by a new name; and to this new corporation transfers all the *property, rights, powers, liberties, and privileges* of the old corporation; with further power to establish new colleges and an institute, and to apply all or any part of the funds to these purposes; subject to the power and control of a board of twenty-five overseers, to be appointed by the governor and council.

The second act makes further provisions for executing the objects of the first, and the last act authorizes the defendant, the treasurer of the plaintiffs, to retain and hold their property, against their will.

If these acts are valid, the old corporation is abolished, and a new one created. The first act does, in fact, if it can have any effect, create a new corporation, and transfer to it all the property and franchises of the old. The two corporations are not the same, in anything which essentially belongs to the existence of a corporation. They have different names, and different powers, rights, and duties. Their organization is wholly different. The powers of the corporation are not vested in the same, or similar hands. In one, the trustees are twelve, and no more. In the other, they are twenty-one. In one, the power is in a single board. In the other, it is divided between two boards. Although the act professes to include the old trustees in the new corporation, yet that was without their assent, and against their remonstrance; and no person can be compelled to be a member of such a corporation against his will. It was neither expected nor intended that they should be members of the new corporation. The act itself treats the old corporation as at an end, and going on the ground that all its functions have ceased, it provides for the first meeting and organization of the new corporation. It expressly provides, also, that

the new corporation shall have and hold all the property of the old; a provision which would be quite unnecessary upon any other ground, than that the old corporation was dissolved. But if it could be contended that the effect of these acts was not entirely to abolish the old corporation, yet it is manifest that they impair and invade the rights, property, and powers of the trustees under the charter, as a corporation, and the legal rights, privileges, and immunities which belong to them, as individual members of the corporation.

The twelve trustees were the *sole* legal owners of all the property acquired under the charter. By the acts, others are admitted, against *their* will, to be joint owners. The twelve individuals who are trustees were possessed of all the franchises and immunities conferred by the charter. By the acts, *nine* other trustees and *twenty-five* overseers are admitted, against their will, to divide these franchises and immunities with them.

If, either as a corporation or as individuals, they have any legal rights, this forcible intrusion of others violates those rights as manifestly as an entire and complete ouster and dispossession. These acts alter the whole constitution of the corporation. They affect the rights of the whole body as a corporation, and the rights of the individuals who compose it. They revoke corporate powers and franchises. They alienate and transfer the property of the college to others. By the charter, the trustees had a right to fill vacancies in their own number. This is now taken away. They were to consist of twelve, and, by express provision, of no more. This is altered. They and their successors, appointed by themselves, were forever to hold the property. The legislature has found successors for them, before their seats are vacant. The powers and privileges which the twelve were to exercise exclusively, are now to be exercised by others. By one of the acts,

they are subjected to heavy penalties if they exercise their offices, or any of those powers and privileges granted them by charter, and which they had exercised for fifty years. They are to be punished for not accepting the new grant, and taking its benefits. This, it must be confessed, is rather a summary mode of settling a question of constitutional right. Not only are new trustees forced into the corporation, but new trusts and uses are created. The college is turned into a university. Power is given to create new colleges, and, to authorize any diversion of the funds which may be agreeable to the new boards, sufficient latitude is given by the undefined power of establishing an institute. To these new colleges, and this institute, the funds contributed by the founder, Doctor Wheelock, and by the original donors, the Earl of Dartmouth and others, are to be applied, in plain and manifest disregard of the uses to which they were given.

The president, one of the old trustees, had a right to his office, salary, and emoluments, subject to the twelve trustees alone. His title to these is now changed, and he is made accountable to new masters. So also all the professors and tutors. If the legislature can at pleasure make these alterations and changes in the rights and privileges of the plaintiffs, it may, with equal propriety, abolish these rights and privileges altogether. The same power which can do any part of this work can accomplish the whole. And, indeed, the argument on which these acts have been hitherto defended goes altogether on the ground, that this is such a corporation as the legislature may abolish at pleasure; and that its members have no *rights*, *liberties*, *franchises*, *property*, or *privileges*, which the legislature may not revoke, annul, alienate, or transfer to others, whenever it sees fit.

It will be contended by the plaintiffs, that these acts are not valid and binding on them, without their assent,

—1. Because they are against common right, and the constitution of New Hampshire. 2. Because they are repugnant to the constitution of the United States.

I am aware of the limits which bound the jurisdiction of the court in this case, and that on this record nothing can be decided but the single question, whether these acts are repugnant to the constitution of the United States. Yet it may assist in forming an opinion of their true nature and character to compare them with those fundamental principles introduced into the state governments for the purpose of limiting the exercise of the legislative power, and which the constitution of New Hampshire expresses with great fullness and accuracy.

It is not too much to assert that the legislature of New Hampshire would not have been competent to pass the acts in question, and to make them binding on the plaintiffs without their assent, even if there had been, in the constitution of New Hampshire, or of the United States, no special restriction on their power, because these acts are not the exercise of a power properly legislative.* Their object and effect are to take away, from one, rights, property, and franchises, and to grant them to another. This is not the exercise of a legislative power. To justify the taking away of vested rights there must be a forfeiture, to adjudge upon and declare which is the proper province of the judiciary. Attainder and confiscation are acts of sovereign power, not acts of legislation. The British parliament, among other unlimited powers, claims that of altering and vacating charters; not as an act of ordinary legislation, but of uncontrolled authority. It is theoretically omnipotent. Yet, in modern times, it has attempted the exercise of this power very rarely. In a celebrated instance, those who asserted this power in parliament vindicated its exercise only in a case in which

* Calder et ux. *v.* Bull, 3 Dallas, 386.

it could be shown, 1st. That the charter in question was a charter of political power; 2d. That there was a great and overruling state necessity, justifying the violation of the charter; 3d. That the charter had been abused and justly forfeited.* The bill affecting this charter did not pass. Its history is well known. The act which afterwards did pass, passed *with the assent of the corporation.* Even in the worst times, this power of parliament to repeal and rescind charters has not often been exercised. The illegal proceedings in the reign of Charles the Second were under color of law. Judgments of forfeiture were obtained in the courts. Such was the case of the *quo warranto* against the city of London, and the proceedings by which the charter of Massachusetts was vacated.

The legislature of New Hampshire has no more power over the rights of the plaintiffs than existed somewhere, in some department of government, before the revolution. The British parliament could not have annulled or revoked this grant as an act of ordinary legislation. If it had done it at all, it could only have been in virtue of that sovereign power called omnipotent which does not belong to any legislature in the United States. The legislature of New Hampshire has the same power over this charter which belonged to the king who granted it and no more. By the law of England, the power to create corporations is a part of the royal prerogative.† By the revolution, this power may be considered as having devolved on the legislature of the state, and it has accordingly been exercised by the legislature. But the king cannot abolish a corporation, or new-model it, or alter its powers, without its

* Annual Reg. 1784, p. 160; Parlia. Reg. 1783; Mr. Burke's Speech on Mr. Fox's E. I. Bill, Burke's Works, 2d Vol. pp. 414, 417, 467, 468, 486.

† 1 Black. 472, 473.

assent. This is the acknowledged and well-known doctrine of the common law. "Whatever might have been the notion in former times," says Lord Mansfield, "it is most certain now that the corporations of the universities are lay corporations; and that the crown cannot take away from them any rights that have been formerly subsisting in them under old charters or prescriptive usage." * After forfeiture duly found, the king may regrant the franchises; but a grant of franchises already granted, and of which no forfeiture has been found, is void.

Corporate franchises can only be forfeited by trial and judgment.† In case of a new charter or grant to an existing corporation, it may accept or reject it as it pleases.‡ It may accept such part of the grant as it chooses, and reject the rest.§ In the very nature of things a charter cannot be forced upon anybody. No one can be compelled to accept a grant; and without acceptance the grant is necessarily void.‖ It cannnot be pretended that the legislature, as successor to the king in this part of his prerogative, has any power to revoke, vacate, or alter this charter. If, therefore, the legislature has not this power by any specific grant contained in the constitution; nor as included in its ordinary legislative powers; nor by reason of its succession to the prerogatives of the crown in this particular, on what ground would the authority to pass these acts rest, even if there were no prohibitory clauses in the constitution and the bill of rights?

But there *are* prohibitions in the constitution and bill of rights of New Hampshire, introduced for the purpose

* 3 Burr. 1656.

† 3 T. R. 244. King *v.* Pasmore.

‡ King *v.* Vice Chancellor of Cambridge, 3 Burr. 1656, 3 T. R. 240—Lord Kenyon.

§ Idem, 1661, and King *v.* Pasmore, *ubi supra.*

‖ Ellis *v.* Marshall, 2 Mass. Rep. 277; 1 Kyd on Corporations, 65–6.

of limiting the legislative power and protecting the rights and property of the citizens. One prohibition is "that no person shall be deprived of his property, immunities, or privileges, put out of the protection of the law, or deprived of his life, liberty, or estate, but by judgment of his peers or the law of the land."

In the opinion, however, which was given in the court below, it is denied that the trustees under the charter had any property, immunity, liberty, or privilege in this corporation, within the meaning of this prohibition in the bill of rights. It is said that it is a public corporation and public property; that the trustees have no greater interest in it than any other individuals; that it is not private property, which they can sell or transmit to their heirs, and that therefore they have no interest in it; that their office is a public trust, like that of the governor or a judge, and that they have no more concern in the property of the college than the governor in the property of the state, or than the judges in the fines which they impose on the culprits at their bar; that it is nothing to them whether their powers shall be extended or lessened, any more than it is to their honors whether their jurisdiction shall be enlarged or diminished. It is necessary, therefore, to inquire into the true nature and character of the corporation which was created by the charter of 1769.

There are divers sorts of corporations; and it may be safely admitted that the legislature has more power over some than others.* Some corporations are for government and political arrangement; such, for example, as cities, counties, and towns in New England. These may be changed and modified as public convenience may require, due regard being always had to the rights of property. Of such corporations, all who live within the

* 1 Wooddeson, 474; 1 Black. 467.

limits are of course obliged to be members, and to submit to the duties which the law imposes on them as such. Other civil corporations are for the advancement of trade and business, such as banks, insurance companies, and the like. These are created, not by general law, but usually by grant. Their constitution is special. It is such as the legislature sees fit to give, and the grantees to accept.

The corporation in question is not a civil, although it is a lay corporation. It is an eleemosynary corporation. It is a private charity, originally founded and endowed by an individual, with a charter obtained for it at his request, for the better administration of his charity. "The eleemosynary sort of corporations are such as are constituted for the perpetual distributions of the free alms or bounty of the founder of them, to such persons as he has directed. Of this are all hospitals for the maintenance of the poor, sick, and impotent; and all colleges both in our universities and out of them." * Eleemosynary corporations are for the management of private property, according to the will of the donors. They are private corporations. A college is as much a private corporation as a hospital; especially a college founded, as this was, by private bounty. A college is a charity. "The establishment of learning," says Lord Hardwicke, "is a charity, and so considered in the statute of Elizabeth. A devise to a college, for their benefit, is a laudable charity, and deserves encouragement."†

The legal signification of *a charity* is derived chiefly from the statute 43 Eliz. ch. 4. "Those purposes," says Sir William Grant, "are considered *charitable* which that statute enumerates."‡ Colleges are enumerated as charities in that statute. The government, in these cases, lends its aid to perpetuate the beneficent intention of the

*1 Black. 471. †1 Ves. 537. ‡9 Ves. Jun. 405.

donor, by granting a charter under which his private charity shall continue to be dispensed after his death. This is done either by incorporating the objects of the charity, as, for instance, the scholars in a college or the poor in a hospital, or by incorporating those who are to be governors or trustees of the charity.* In cases of the first sort, the founder is, by the common law, visitor. In early times it became a maxim, that he who gave the property might regulate it in future. *Cujus est dare, ejus est disponere.* This right of visitation descended from the founder to his heir as a right of property, and precisely as his other property went to his heir; and in default of heirs it went to the king, as all other property goes to the king for the want of heirs. The right of visitation arises from the property. It grows out of the endowment. The founder may, if he please, part with it at the time when he establishes the charity, and may vest it in others. Therefore, if he chooses that governors, trustees, or overseers should be appointed in the charter, he may cause it to be done, and his power of visitation will be transferred to them, instead of descending to his heirs. The persons thus assigned or appointed by the founder will be visitors, with all the powers of the founder, in exclusion of his heir.† The right of visitation, then, accrues to them, as a matter of property, by the gift, transfer, or appointment of the founder. This is a private right, which they can assert in all legal modes, and in which they have the same protection of the law as in all other rights. As visitors they may make rules, ordinances, and statutes, and alter and repeal them, as far as permitted so to do by the charter.‡ Although the charter proceeds from the crown or the government, it is considered as the will of the donor. It is obtained at his request. He imposes it as the rule

*1 Wood. 474. † 1 Black. 471. ‡ 2 Term Rep. 350-1.

which is to prevail in the dispensation of his bounty in all future times. The king or government which grants the charter is not thereby the founder, but he who furnishes the funds. The gift of the revenues is the foundation.* The leading case on this subject is Phillips *v.* Bury.† This was an ejectment brought to recover the rectory-house, etc., of Exeter College in Oxford. The question was, whether the plaintiff or defendant was legal rector. Exeter College was founded by an individual, and incorporated by a charter granted by Queen Elizabeth. The controversy turned upon the power of the visitor, and in the discussion of the cause, the nature of college charters and corporations was very fully considered. Lord Holt's judgment, copied from his own manuscript, is in 2 Term Rep., 346. The following is an extract:

"That we may the better apprehend the nature of a visitor, we are to consider that there are in law two sorts of corporations aggregate; such as are for public government, and such as are for private charity. Those that are for the public government of a town, city, mystery, or the like, being for public advantage, are to be governed according to the laws of the land. If they make any particular private laws and constitutions, the validity and justice of them is examinable in the king's court. Of these there are no particular private founders, and consequently no particular visitor; there are no patrons of these; therefore, if no provision be in the charter how the succession shall continue, the law supplieth the defect of that constitution, and saith it shall be by election; as mayor, alderman, common council, and the like. But *private* and particular corporations for charity, founded and endowed by private persons, are subject to the private government of those who erect them; and therefore, if there be no visitor appointed by the founder, the law appoints the founder and his heirs to be visitors, who are to act and pro-

* 1 Black, 480.

† Reported in 1 Lord Raymond, 5; Comb. 265; Holt, 715; 1 Show. 360; 4 Mod. 106; Skinn. 447.

ceed according to the particular laws and constitutions assigned them by the founder. It is now admitted on all hands that the founder is patron, and, as founder, is visitor, if no particular visitor be assigned; so that patronage and visitation are necessary consequents one upon another. For this visitatorial power was not introduced by any canons or constitutions ecclesiastical (as was said by a learned gentleman whom I have in my eye, in his argument of this case): it is an appointment of law. It ariseth from the property which the founder had in the lands assigned to support the charity; and as he is the author of the charity, the law gives him and his heirs a visitatorial power, that is, an authority to inspect the actions and regulate the behavior of the members that partake of the charity. For it is fit the members that are endowed, and that have the charity bestowed upon them, should not be left to themselves, but pursue the intent and design of him that bestowed it upon them. *Now indeed, where the poor, or those that receive the charity, are not incorporated, but there are certain trustees who dispose of the charity, there is no visitor, because the interest of the revenue is not vested in the poor that have the benefit of the charity, but they are subject to the orders and directions of the trustees.* But where they who are to enjoy the benefit of the charity are incorporated, there to prevent all perverting of the charity, or to compose differences that may happen among them, there is by law a visitatorial power; and it being a creature of the founder's own, it is reason that he and his heirs should have that power, unless by the founder it is vested in some other. Now there is no manner of difference between a college and a hospital, except only in degree. A hospital is for those that are poor, and mean, and low, and sickly; a college is for another sort of indigent person; but it hath another intent, to study in and breed up persons in the world that have no otherwise to live; but still it is as much within the reasons as hospitals. And if in a hospital the master and poor are incorporated, it is a college having a common seal to act by, although it hath not the name of a college (which always supposeth a corporation,) because it is of an inferior degree; and in the one case and in the other there must be a visitor, either the founder and his heirs or one appointed by him; and both are eleemosynary."

Lord Holt concludes his whole argument by again repeating, that that college was a *private corporation*, and

that the founder had a right to appoint a visitor, and to give him such power as he saw fit.*

The learned Bishop Stillingfleet's argument in the same cause, as a member of the house of lords, when it was there heard, exhibits very clearly the nature of colleges and similar corporations. It is to the following effect. "That this absolute and conclusive power of visitors is no more than the law hath appointed in other cases, upon commissions of charitable uses: that the common law, and not any ecclesiastical canons, do place the power of visitation in the founder and his heirs, *unless he settle it upon others:* that although corporations for public government be subject to the courts of Westminster Hall, which have no particular or special visitors, yet corporations for charity, founded and endowed by private persons, are subject to the rule and government of those that erect them; but where the persons to whom the charity is given are not incorporated, there is no such visitatorial power, because the interest of the revenue is not invested in them; but where they are, the right of visitation ariseth from the foundation, and the founder may convey *it to whom and in what manner he pleases; and the visitor acts as founder, and by the same authority which he had, and consequently is no more accountable than he had been:* that the king by his charter can make a society to be incorporated so as to have the rights belonging to persons, as to legal capacities: that colleges, although founded by private persons, are yet incorporated by the king's charter; but although the kings by their charter made the colleges to be such in law, that is, to be legal corporations, yet they left to the particular founders authority to appoint what statutes they thought fit for the regulation of them. And not only the statutes, but the appointment of visitors, was left to them, and the manner

* 1 Lord Ray. 9.

of government, and the several conditions on which any persons were to be made or continue partakers of their bounty." *

These opinions received the sanction of the house of lords, and they seem to be settled and undoubted law. Where there is a charter, vesting proper powers in trustees, or governors, they are visitors; and there is no control in anybody else; except only that the courts of equity or of law will interfere so far as to preserve the revenues and prevent the perversion of the funds, and to keep the visitors within their prescribed bounds. "If there be a charter with proper powers, the charity must be regulated in the manner prescribed by the charter. There is no ground for the controlling interposition of the courts of chancery. The interposition of the courts, therefore, in those instances in which the charities were founded on charters or by act of parliament, and a visitor or governor and trustees appointed, must be referred to the general jurisdiction of the courts in all cases in which a trust conferred appears to have been abused, and not to an original right to direct the management of the charity, or the conduct of the governors or trustees." † "The original of all *visitatorial* power is the property of the donor, and the power every one has to dispose, direct, and regulate his own property; like the case of patronage; *cujus est dare*, etc. Therefore, if either the crown or the subject creates an eleemosynary foundation, and vests the charity in the persons who are to receive the benefit of it, since a contest might arise about the government of it, the law allows the founder or his heirs, or the person specially appointed by him to be visitor, to determine concerning his own creature. If the charity is not vested in the persons who are to partake, but in trustees

* See Appendix, No. 3—1 Burn's Eccles. Law, 443.
† 2 Fonb. 205–6.

for their benefit, no visitor can arise by implication, but the trustees have that power." *

"There is nothing better established," says Lord Commissioner Eyre, "than that this court does not entertain a general jurisdiction, or regulate and control charities *established by charter.* There the establishment is fixed and determined and the court has no power to vary it. If the governors established for the regulation of it are not those who have the management of the revenue, this court has no jurisdiction, and if it is ever so much abused, as far as it respects the jurisdiction of this court it is without remedy; but if those established as governors have also the management of the revenues, this court does assume a jurisdiction of necessity, so far as they are to be considered as trustees of the revenue." †

"The foundations of colleges," says Lord Mansfield, "are to be considered in two views; namely, as they are *corporations* and as they are *eleemosynary.* As eleemosynary, they are the creatures of the founder; he may delegate his power, either generally or specially; he may prescribe particular modes and manners, as to the exercise of part of it. If he makes a general visitor (as by the general words *visitator sit,*) the person so constituted has all incidental power; but he may be restrained as to particular instances. The founder may appoint a special visitor for a particular purpose, and no further. The founder may make a general visitor; and yet appoint an inferior particular power, to be executed without going to the visitor in the first instance."‡ And even if the king be founder, if he grant a charter, in-

* 1 Ves. 472, Green *v.* Rutherforth, per Lord Hardwicke.

† Attorney General *v.* Foundling Hospital, 2 Ves. Jun. 47. Vide also 2 Kyd on Corporations, 195; Cooper's Equity Pleading, 292.

‡ St. John's College, Cambridge, *v.* Todington, 1 Burr. 200.

corporating trustees and governors, *they are visitors*, and the king cannot visit.* A subsequent donation, or ingrafted fellowship, falls under the same general visitatorial power, if not otherwise specially provided.†

In New England, and perhaps throughout the United States, eleemosynary corporations have been generally established in the latter mode; that is, by incorporating governors, or trustees, and vesting in them the right of visitation. Small variations may have been in some instances adopted; as in the case of Harvard College, where some power of inspection is given to the overseers, but not, strictly speaking, a visitatorial power, which still belongs, it is apprehended, to the fellows or members of the corporation. In general, there are many donors. A charter is obtained, comprising them all, or some of them, and such others as they choose to include, with the right of appointing their successors. They are thus the visitors of their own charity, and appoint others, such as they may see fit, to exercise the same office in time to come. All such corporations are private. The case before the court is clearly that of an eleemosynary corporation. It is, in the strictest legal sense, a private charity. In King *v.* St. Catharine's Hall,‡ that college is called a private eleemosynary lay corporation. It was endowed by a private founder, and incorporated by letters patent. And in the same manner was Dartmouth College founded and incorporated. Doctor Wheelock is declared by the charter to be its founder. It was established by him, on funds contributed and collected by himself.

As such founder, he had a right of visitation, which he assigned to the trustees, and they received it by his con-

* Attorney General *v.* Middleton, 2 Ves. 328.

† Green *v.* Rutherforth, *ubi supra;* St. John's College, *v.* Todington, *ubi supra.*

‡ 4 Term. Rep. 233.

sent and appointment, and held it under the charter.† He appointed these trustees visitors, and in that respect to take place of his heir; as he might have appointed devisees, to take his estate instead of his heir. Little, probably, did he think at that time, that the legislature would ever take away this property and these privileges, and give them to others. Little did he suppose that this charter secured to him and his successors no legal rights. Little did the other donors think so. If they had, the college would have been, what the university is now, a thing upon paper, existing only in name.

The numerous academies in New England have been established substantially in the same manner. They hold their property by the same tenure, and no other. Nor has Harvard College any surer title than Dartmouth College. It may to-day have more friends; but to-morrow it may have more enemies. Its legal rights are the same. So also of Yale College; and, indeed, of all the others. When the legislature gives to these institutions, it may and does accompany its grants with such conditions as it pleases. The grant of lands by the legislature of New Hampshire to Dartmouth College, in 1789, was accompanied with various conditions. When donations are made, by the legislature or others, to a charity already existing, without any condition, or the specification of any new use, the donation follows the nature of the charity. Hence the doctrine, that all eleemosynary corporations are private bodies. They are founded by private persons, and on private property. The public cannot be charitable in these institutions. It is not the money of the public, but of private persons, which is dispensed. It may be public, that is general, in its uses and advantages; and the state may very laudably add contributions of its own to the funds; but it is still private in the tenure of

* Black. *ubi supra.*

the property, and in the right of administering the funds.

If the doctrine laid down by Lord Holt, and the house of lords, in Phillips *v.* Bury, and recognized and established in all the other cases, be correct, the property of this college was private property; it was vested in the trustees by the charter, and to be administered by them, according to the will of the founder and donors, as expressed in the charter. They were also visitors of the charity, in the most ample sense. They had, therefore, as they contend, privileges, property, and immunities, within the true meaning of the bill of rights. They had rights, and still have them, which they can assert against the legislature, as well as against other wrongdoers. It makes no difference, that the estate is holden for certain trusts. The legal estate is still theirs. They have a right in the property, and they have a right of visiting and superintending the trust; and this is an object of legal protection, as much as any other right. The charter declares that the powers conferred on the trustees are "privileges, advantages, liberties, and immunities;" and that they shall be forever holden by them and their successors. The New Hampshire bill of rights declares that no one shall be deprived of his "property, privileges, or immunities," but by judgment of his peers, or the law of the land. The argument on the other side is, that, although these terms may mean something in the bill of rights, they mean nothing in this charter. But they are terms of legal signification, and very properly used in the charter. They are equivalent with *franchises*. Blackstone says that *franchise* and *liberty* are used as synonymous terms. And after enumerating other liberties and franchises, he says: "It is likewise a franchise for a number of persons to be incorporated and subsist as a body politic, with a power to maintain perpetual succes-

sion and do other corporate acts; and each individual member of such a corporation is also said to have a franchise or freedom." *

Liberties is the term used in Magna Charta as including franchises, privileges, immunities, and all the rights which belong to that class. Professor Sullivan says, the term signifies the "*privileges* that some of the subjects, whether single persons or bodies corporate, have above others by the lawful grant of the king; as the chattels of felons or outlaws, and the lands *and privileges of corporations.*"†

The privilege, then, of being a member of a corporation, under a lawful grant, and of exercising the rights and powers of such member, is such a privilege, *liberty* or *franchise*, as has been the object of legal protection, and the subject of a legal interest, from the time of Magna Charta to the present moment. The plaintiffs have such an interest in this corporation, individually, as they could assert and maintain in a court of law, not as agents of the public, but in their own right. Each trustee has a *franchise*, and if he be disturbed in the enjoyment of it, he would have redress, on appealing to the law, as promptly as for any other injury. If the other trustees should conspire against any one of them to prevent his equal right and voice in the appointment of a president or professor, or in the passing of any statute or ordinance of the college, he would be entitled to his action, for depriving him of his franchise. It makes no difference, that this property is to be holden and administered, and these franchises exercised, for the purpose of diffusing learning. No principle and no case establishes any such distinction. The public may be benefited by the use of this property. But this does not change the nature of the property, or the rights of the owners. The object of the charter may be public good; so it is in all other corporations; and

* 2 Black. Com. 37. † Sull. 41st Lect.

this would as well justify the resumption or violation of the grant in any other case as in this. In the case of an advowson, the use is public, and the right cannot be turned to any private benefit or emolument. It is nevertheless a legal private right, and the *property* of the owner, as emphatically as his freehold. The rights and privileges of trustees, visitors, or governors of incorporated colleges, stand on the same foundation. They are so considered, both by Lord Holt and Lord Hardwicke.*

To contend that the rights of the plaintiffs may be taken away, because they derive from them no pecuniary benefit or private emolument, or because they cannot be transmitted to their heirs, or would not be assets to pay their debts, is taking an extremely narrow view of the subject. According to this notion, the case would be different, if, in the charter, they had stipulated for a commission on the disbursement of the funds; and they have ceased to have any interest in the property, because they have undertaken to administer it gratuitously.

It cannot be necessary to say much in refutation of the idea, that there cannot be a legal interest, or ownership, in anything which does not yield a pecuniary profit; as if the law regarded no rights but the rights of money, and of visible, tangible property. Of what nature are all rights of suffrage? No elector has a particular personal interest; but each has a legal right, to be exercised at his own discretion, and it cannot be taken away from him. The exercise of this right directly and very materially affects the public; much more so than the exercise of the privileges of a trustee of this college. Consequences of the utmost magnitude may sometimes depend on the exercise of the right of suffrage by one or a few electors. Nobody was ever yet heard to contend, however, that on that ac-

* Phillips *v.* Bury.—Green *v.* Rutherforth, *ubi supra.* Vide also 2 Black. 21.

count the public might take away the right, or impair it. This notion appears to be borrowed from no better source than the repudiated doctrine of the three judges in the Aylesbury case.* That was an action against a returning officer for refusing the plaintiff's vote, in the election of a member of parliament. Three of the judges of the king's bench held, that the action could not be maintained, because, among other objections, "it was not any matter of profit, either *in presenti*, or *in futuro*." It would not enrich the plaintiff *in presenti*, nor would it *in futuro* go to his heirs, or answer to pay his debts. But Lord Holt and the house of lords were of another opinion. The judgment of the three judges was reversed, and the doctrine they held, having been exploded for a century, seems now for the first time to be revived.

Individuals have a right to use their own property for purposes of benevolence, either towards the public, or towards other individuals. They have a right to exercise this benevolence in such lawful manner as they may choose; and when the government has induced and excited it, by contracting to give perpetuity to the stipulated manner of exercising it, to rescind this contract, and seize on the property, is not law, but violence. Whether the state will grant these franchises, and under what conditions it will grant them, it decides for itself. But when once granted, the constitution holds them to be sacred, till forfeited for just cause.

That all property, of which the use may be beneficial to the public, belongs therefore to the public, is quite a new doctrine. It has no precedent, and is supported by no known principle. Doctor Wheelock might have answered his purposes, in this case, by executing a private deed of trust. He might have conveyed his property to trustees, for precisely such uses as are described in this

* Ashby *v.* White, 2 Lord Raym. 938.

charter. Indeed, it appears that he had contemplated the establishing of his school in that manner, and had made his will, and devised the property to the same persons who were afterwards appointed trustees in the charter. Many literary and other charitable institutions are founded in that manner, and the trust is renewed, and conferred on other persons, from time to time, as occasion may require. In such a case, no lawyer would or could say, that the legislature might divest the trustees, constituted by deed or will, seize upon the property, and give it to other persons, for other purposes. And does the granting of a charter, which is only done to perpetuate the trust in a more convenient manner, make any difference? Does or can this change the nature of the charity, and turn it into a public political corporation? Happily, we are not without authority on this point. It has been considered and adjudged. Lord Hardwicke says, in so many words, "The charter of the crown cannot make a charity more or less public, but only more permanent than it would otherwise be."*

The granting of the corporation is but making the trust perpetual, and does not alter the nature of the charity. The very object sought in obtaining such charter, and in giving property to such a corporation, is to make and keep it private property and to clothe it with all the security and inviolability of private property. The intent is, that there shall be a legal private ownership, and that the legal owners shall maintain, and protect the property, for the benefit of those for whose use it was designed. Who ever endowed the public? Who ever appointed a legislature to administer his charity? Or who ever heard, before, that a gift to a college, or hospital, or an asylum, was, in reality, nothing but a gift to the state?

The state of Vermont is a principal donor to Dartmouth

* 2 Atk. 87, Attorney-General *v.* Pearce.

College. The lands given lie in that state. This appears in the special verdict. Is Vermont to be considered as having intended a gift to the state of New Hampshire in this case, as, it has been said, is to be the reasonable construction of all donations to the college? The legislature of New Hampshire affects to represent the public, and therefore claims a right to control all property destined to public use. What hinders Vermont from considering herself equally the representative of the public, and from resuming her grants, at her own pleasure? Her right to do so is less doubtful than the power of New Hampshire to pass the laws in question.

In University *v.* Foy,* the supreme court of North Carolina pronounced unconstitutional and void a law repealing a grant to the University of North Carolina, although that university was originally erected and endowed by a statute of the state. That case was a grant of lands, and the court decided that it could not be resumed. This is the grant of a power and capacity to hold lands. Where is the difference of the cases, upon principle?

In Terrett *v.* Taylor,† this court decided that a legislative grant or confirmation of lands, for the purposes of moral and religious instruction, could no more be rescinded than other grants. The nature of the use was not holden to make any difference. A grant to a parish or church, for the purposes which have been mentioned, cannot be distinguished, in respect to the title it confers, from a grant to a college for the promotion of piety and learning. To the same purpose may be cited the case of Pawlett *v.* Clark. The state of Vermont, by statute, in 1794, granted to the respective towns in that state certain glebe lands lying within those towns for the sole use and support of religious worship. In 1799, an act was passed to repeal the act of 1794; but this court declared, that

* 2 Haywood's Rep. † 9 Cranch, 43.

the act of 1794, "so far as it granted the glebes to the towns, could not afterwards be repealed by the legislature, so as to divest the rights of the towns under the grant." *

It will be for the other side to show that the nature of the use decides the question whether the legislature has power to resume its grants. It will be for those who maintain such a doctrine to show the principles and cases upon which it rests. It will be for them also to fix the limits and boundaries of their doctrine, and to show what are and what are not such uses as to give the legislature this power of resumption and revocation. And to furnish an answer to the cases cited, it will be for them further to show that a grant for the use and support of religious worship stands on other ground than a grant for the promotion of piety and learning.

I hope enough has been said to show that the trustees possessed vested liberties, privileges, and immunities, under this charter; and that such liberties, privileges, and immunities, being once lawfully obtained and vested, are as inviolable as any vested rights of property whatever. Rights to do certain acts, such, for instance, as the visitation and superintendence of a college and the appointment of its officers, may surely be vested rights, to all legal intents, as completely as the right to possess property. A late learned judge of this court has said, "When I say that a *right* is vested in a citizen, I mean that he has the power to do *certain actions*, or to possess *certain things*, according to the law of the land."†

If such be the true nature of the plaintiffs' interests under this charter, what are the articles in the New Hampshire bill of rights which these acts infringe?

They infringe the second article; which says, that the citizens of the state have a right to hold and possess prop-

* 9 Cranch, 292. † 3 Dall. 394.

erty. The plaintiffs had a legal property in this charter; and they had acquired property under it. The acts deprive them of both. They impair and take away the charter; and they appropriate the property to new uses, against their consent. The plaintiffs cannot now hold the property acquired by themselves, and which this article says they have a right to hold.

They infringe the twentieth article. By that article it is declared that, in questions of property, there is a right to trial. The plaintiffs are divested, without trial or judgment.

They infringe the twenty-third article. It is therein declared that no retrospective laws shall be passed. This article bears directly on the case. These acts must be deemed to be retrospective, within the settled construction of that term. What a retrospective law is, has been decided, on the construction of this very article, in the circuit court for the first circuit. The learned judge of that circuit says: "Every statute which takes away or impairs vested rights, acquired under existing laws, must be deemed retrospective." * That all such laws are retrospective was decided also in the case of Dash *v.* Van Kleek,† where a most learned judge quotes this article from the constitution of New Hampshire, with manifest approbation, as a plain and clear expression of those fundamental and unalterable principles of justice, which must lie at the foundation of every free and just system of laws. Can any man deny that the plaintiffs had rights, under the charter, which were legally vested, and that by these acts those rights are impaired?

"It is a principle in the English law," says Chief Justice Kent, in the case last cited, "as ancient as the law itself, that a statute, even of its omnipotent parliament,

* 2 Gal. 103, Society *v.* Wheeler. † 7 Johnson's Rep. 477.

is not to have a retrospective effect. *Nova constitutio futuris formam imponere debet, et non præteritis.**

The maxim in Bracton was probably taken from the civil law, for we find in that system the same principle, that the lawgiver cannot alter his mind to the prejudice of a vested right. *Nemo potest mutare concilium suum in alterius injuriam.*† This maxim of Papinian is general in its terms, but Doctor Taylor‡ applies it directly as a restriction upon the lawgiver, and a declaration in the code leaves no doubt as to the sense of the civil law. *Leges et constitutiones futuris certum est dare formam negotiis, non ad facta præterita revocari, nisi nominatim, et de præterito tempore, et adhuc pendentibus negotiis cautum sit.*§ This passage, according to the best interpretation of the civilians, relates not merely to future suits, but to future, as contradistinguished from past, contracts and vested rights.‖ It is indeed admitted that the prince may enact a retrospective law, provided it be done *expressly;* for the will of the prince under the despotism of the Roman emperors was paramount to every obligation. Great latitude was anciently allowed to legislative expositions of statutes; for the separation of the judicial from the legislative power was not then distinctly known or prescribed. The prince was in the habit of interpreting his own laws for particular occasions. This was called the *Interlocutio Principis;* and this, according to Huber's definition, was *quando principes inter partes loquuntur et jus dicunt.*¶ No correct civilian, and especially no proud admirer of the ancient republic (if any such then existed,) could have reflected on this interference with private rights and pending suits without disgust and indignation; and we are rather surprised to find that, under the violent and absolute

* Bracton, Lib. 4, fol. 228. 2d Inst. 292. † Dig. 50. 17. 75.
‡ Elements of the Civil Law, 168. § Cod. 1. 14. 7.
‖ Perezii Prælect. h. t. ¶ Prælect. Juris Civ., Vol. II, 545.

genius of the Roman government, the principle before us should have been acknowledged and obeyed to the extent in which we find it. The fact shows that it must be founded in the clearest justice. Our case is happily very different from that of the subjects of Justinian. With us the power of the lawgiver is limited and defined; the judicial is regarded as a distinct, independent power; private rights have been better understood and more exalted in public estimation, as well as secured by provisions dictated by the spirit of freedom, and unknown to the civil law. Our constitutions do not admit the power assumed by the Roman prince, and the principle we are considering is now to be regarded as sacred."

These acts infringe also the thirty-seventh article of the constitution of New Hampshire; which says, that the powers of government shall be kept separate. By these acts, the legislature assumes to exercise a judicial power. It declares a forfeiture, and resumes franchises, once granted, without trial or hearing.

If the constitution be not altogether waste-paper, it has restrained the power of the legislature in these particulars. If it has any meaning, it is that the legislature shall pass no act directly and manifestly impairing private property and private privileges. It shall not judge by act. It shall not decide by act. It shall not deprive by act. But it shall leave all these things to be tried and adjudged by the law of the land.

The fifteenth article has been referred to before. It declares that no one shall be "deprived of his property, immunities, or privileges, but by the judgment of his peers or the law of the land." Notwithstanding the light in which the learned judges in New Hampshire viewed the rights of the plaintiffs under the charter, and which has been before adverted to, it is found to be admitted in their opinion, that those rights are privileges within the

meaning of this fifteenth article of the bill of rights. Having quoted that article, they say: "That the right to manage the affairs of this college is a privilege, within the meaning of this clause of the bill of rights, is not to be doubted." In my humble opinion, this surrenders the point. To resist the effect of this admission, however, the learned judges add: "But how a privilege can be protected from the operation of the law of the land by a clause in the constitution, declaring that it shall not be taken away but by the law of the land, is not very easily understood." This answer goes on the ground, that the acts in question are laws of the land, within the meaning of the constitution. If they be so, the argument drawn from this article is fully answered. If they be not so, it being admitted that the plaintiffs' rights are "privileges," within the meaning of the article, the argument is not answered, and the article is infringed by the acts. Are, then, these acts of the legislature, which affect only particular persons and their particular privileges, laws of the land?

Let this question be answered by the text of Blackstone. "And first it (i. e. law) is a *rule:* not a transient, sudden order from a superior to or concerning a particular person; but something permanent, uniform, and universal. Therefore a particular act of the legislature to confiscate the goods of Titius, or to attaint him of high treason, does not enter into the idea of a municipal law; for the operation of this act is spent upon Titius only, and has no relation to the community in general; it is rather a sentence than a law." * Lord Coke is equally decisive and emphatic. Citing and commenting on the celebrated twenty-ninth chapter of Magna Charta, he says: "No man shall be disseized, etc., unless it be by the lawful judgment, that is, verdict of equals, or by the

* 1 Black. Com. 44.

law of the land, that is (to speak it once for all,) by the due course and process of law."* Have the plaintiffs lost their franchises by "due course and process of law?" On the contrary, are not these acts "particular acts of the legislature, which have no relation to the community in general and which are rather sentences than laws?"

By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not therefore to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms, would be the law of the land.

Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the legislature. There would be no general, permanent law for courts to administer or for men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law or to administer the justice of the country. "Is that the law of the land," said Mr. Burke, "upon which, if a man go to Westminster Hall, and ask counsel by what title or tenure he holds his privilege or estate *according to the law of the land*, he should be told, that the law of the land is not yet known; that no decision or decree has been made in his case; that when a decree

* Coke, 2 In. 46.

shall be passed, he will then know *what the law of the land is?* Will this be said to be the law of the land, by any lawyer who has a rag of a gown left upon his back, or a wig with one tie upon his head?"

That the power of electing and appointing the officers of this college is not only a right of the trustees as a corporation, generally, and in the aggregate, but that each individual trustee has also his own individual franchise in such right of election and appointment, is according to the language of all the authorities. Lord Holt says: "It is agreeable to reason and the rules of law, that a franchise should be vested in the corporation aggregate, and yet the benefit of it to redound to the particular members, and to be enjoyed by them in their private capacity. Where the privilege of election is used by particular persons, *it is a particular right, vested in every particular man.*" *

It is also to be considered, that the president and professors of this college have rights to be affected by these acts. Their interest is similar to that of fellows in the English colleges; because they derive their living, wholly or in part, from the founder's bounty. The president is one of the trustees or corporators. The professors are not necessarily members of the corporation; but they are appointed by the trustees, are removable only by them, and have fixed salaries payable out of the general funds of the college. Both president and professors have freeholds in their offices; subject only to be removed by the trustees, as their legal visitors, for good cause. All the authorities speak of fellowships in colleges as freeholds, notwithstanding the fellows may be liable to be suspended or removed, for misbehavior, by their constituted visitors.

Nothing could have been less expected, in this age,

*2 Lord Ray, 952.

than that there should have been an attempt, by acts of the legislature, to take away these college livings, the inadequate but the only support of literary men who have devoted their lives to the instruction of youth. The president and professors were appointed by the twelve trustees. They were accountable to nobody else, and could be removed by nobody else. They accepted their offices on this tenure. Yet the legislature has appointed other persons, with power to remove these officers and to deprive them of their livings; and those other persons have exercised that power. No description of private property has been regarded as more sacred than college livings. They are the estates and freeholds of a most deserving class of men; of scholars who have consented to forego the advantages of professional and public employments, and to devote themselves to science and literature and the instruction of youth in the quiet retreats of academic life. Whether to dispossess and oust them; to deprive them of their office, and to turn them out of their livings; to do this, not by the power of their legal visitors or governors, but by acts of the legislature, and to do it without forfeiture and without fault; whether all this be not in the highest degree an indefensible and arbitrary proceeding, is a question of which there would seem to be but one side fit for a lawyer or a scholar to espouse.

Of all the attempts of James II. to overturn the law, and the rights of his subjects, none was esteemed more arbitrary or tyrannical than his attack on Magdalen College, Oxford; and yet that attempt was nothing but to put out one president and put in another. The president of that college, according to the charter and statutes, is to be chosen by the fellows, who are the corporators. There being a vacancy, the king chose to take the appointment out of the hands of the fellows, the legal

electors of a president, into his own hands. He therefore sent down his mandate, commanding the fellows to admit for president a person of his nomination; and, inasmuch as this was directly against the charter and constitution of the college, he was pleased to add a *non obstante* clause of sufficiently comprehensive import. The fellows were commanded to admit the person mentioned in the mandate, "any statute, custom, or constitution to the contrary notwithstanding, wherewith we are graciously pleased to dispense in this behalf." The fellows refused obedience to this mandate, and Doctor Hough, a man of independence and character, was chosen president by the fellows, according to the charter and statutes. The king then assumed the power, in virtue of his prerogative, to send down certain commissioners to turn him out; which was done accordingly; and Parker, a creature suited to the times, put in his place. And because the president, who was rightfully and legally elected, *would not deliver the keys, the doors were broken open.* "The nation as well as the university," says Bishop Burnet,* "looked on all these proceedings with just indignation. It was thought an open piece of robbery and burglary when men, authorized by no legal commission, came and forcibly turned men out of their possession and freehold." Mr. Hume, although a man of different temper, and of other sentiments, in some respects, than Doctor Burnet, speaks of this arbitrary attempt of prerogative in terms not less decisive. "The president, and all the fellows," says he, "except two, who complied, were expelled the college, and Parker was put in possession of the office. This act of violence, of all those which were committed during the reign of James, is perhaps the most illegal and arbitrary. When the dispensing power was the most strenuously insisted on by court

* Hist. of his own Times, Vol. 3, p. 119.

lawyers, it had still been allowed that the statutes which regard private property could not legally be infringed by that prerogative. Yet, in this instance, it appeared that even these were not now secure from invasion. The privileges of a college are attacked; men are illegally dispossessed of their property for adhering to their duty, to their oaths, and to their religion."

This measure King James lived to repent, after repentance was too late. When the charter of London was restored, and other measures of violence retracted, to avert the impending revolution, the expelled president and fellows of Magdalen College were permitted to resume their rights. It is evident that this was regarded as an arbitrary interference with private property. Yet private property was no otherwise attacked than as a person was appointed to administer and enjoy the revenues of a college in a manner and by persons not authorized by the constitution of the college. A majority of the members of the corporation would not comply with the king's wishes. A minority would. The object was therefore to make this minority a majority. To this end the king's commissioners were directed to interfere in the case, and they united with the two complying fellows, and expelled the rest; and thus effected a change in the government of the college. The language in which Mr. Hume and all other writers speak of this abortive attempt of oppression, shows that colleges were esteemed to be, as they truly are, private corporations, and the property and privileges which belong to them *private* property and *private* privileges. Court lawyers were found to justify the king in dispensing with the laws; that is, in assuming and exercising a legislative authority. But no lawyer, not even a court lawyer, in the reign of King James the Second, as far as appears, was found to say that, even by his high authority, he could infringe the franchises of the fellows

of a college, and take away their livings. Mr. Hume gives the reason; it is, that such franchises were regarded, in a most emphatic sense, *as private property.**

If it could be made to appear that the trustees and the president and professors held their offices and franchises during the pleasure of the legislature, and that the property holden belonged to the state, then indeed the legislature have done no more than they have a right to do. But this is not so. The charter is a charter of privileges and immunities; and these are holden by the trustees expressly against the state forever.

It is admitted that the state, by its courts of law, can enforce the will of the donor, and compel a faithful execution of the trust. The plaintiffs claim no exemption from legal responsibility. They hold themselves at all times answerable to the law of the land, for their conduct in the trust committed to them. They ask only to hold the property of which they are owners, and the franchises which belong to them, until they shall be found, by due course and process of law, to have forfeited them.

It can make no difference whether the legislature exercise the power it has assumed by removing the trustees and the president and professors, directly and by name, or by appointing others to expel them. The principle is the same, and in point of fact the result has been the same. If the entire franchise cannot be taken away, neither can it be essentially impaired. If the trustees are legal owners of the property, they are sole owners. If they are visitors, they are sole visitors. No one will be found to say, that, if the legislature may do what it has done, it may not do anything and everything which it may choose to do, relative to the property of the corporation, and the privileges of its members and officers.

*** Vide a full account of this case in State Trials, 4th edition, Vol. 4, page 262.**

If the view which has been taken of this question be at all correct, this was an eleemosynary corporation, a private charity. The property was private property. The trustees were visitors, and the right to hold the charter, administer the funds, and visit and govern the college, was a franchise and privilege, solemnly granted to them. The use being public in no way diminishes their legal estate in the property, or their title to the franchise. There is no principle, nor any case, which declares that a gift to such a corporation is a gift to the public. The acts in question violate property. They take away privileges, immunities, and franchises. They deny to the trustees the protection of the law; and they are retrospective in their operation. In all which respects they are against the constitution of New Hampshire.

The plaintiffs contend, in the second place, that the acts in question are repugnant to the tenth section of the first article of the constitution of the United States. The material words of that section are: "No state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

The object of these most important provisions in the national constitution has often been discussed, both here and elsewhere. It is exhibited with great clearness and force by one of the distinguished persons who framed that instrument: "Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the state constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention

added this constitutional bulwark, in favor of personal security and private rights; and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret, and with indignation, that sudden changes, and legislative interferences in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding." *

It has already been decided in this court, that a *grant* is a contract, within the meaning of this provision; and that a grant by a state is also a contract, as much as the grant of an individual. In Fletcher *v.* Peck,† this court says: "A contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing; such was the law under which the conveyance was made by the government. A contract executed is one in which the object of contract is performed; and this, says Blackstone, differs in nothing from a grant. The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. If, under a fair construction of the constitution, grants are comprehended under the term contracts, is a grant

* 44th No. of the Federalist, by Mr. Madison. † 6 Cranch, 87.

from the state excluded from the operation of the provision? Is the clause to be considered as inhibiting the state from impairing the obligation of contracts between two individuals, but as excluding from that inhibition contracts made with itself? The words themselves contain no such distinction. They are general, and are applicable to contracts of every description. If contracts made with the state are to be exempted from their operation, the exception must arise from the character of the contracting party, not from the words which are employed. Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights for the people of each state."

It has also been decided that a grant by a state before the revolution is as much to be protected as a grant since.* But the case of Terrett *v.* Taylor, before cited, is of all others most pertinent to the present argument. Indeed, the judgment of the court in that case seems to leave little to be argued or decided in this. "A private corporation," say the court, "created by the legislature, may lose its franchises by a *misuser* or a *nonuser* of them; and they may be resumed by the government under a judicial judgment upon a *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land, and

* New Jersey *v.* Wilson, 7 Cranch, 164.

is a tacit condition annexed to the creation of every such corporation. Upon a change of government, too, it may be admitted that such exclusive privileges attached to a private corporation as are inconsistent with the new government, may be abolished. In respect, also, to *public* corporations which exist only for public purposes, such as counties, towns, cities, and so forth, the legislature may, under proper limitations, have a right to change, modify, enlarge, or restrain them, securing, however, the property for the uses of those for whom, and at whose expense it was originally purchased. But that the legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the state, or dispose of the same to such purposes as they please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

This court, then, does not admit the doctrine that a legislature can repeal statutes creating private corporations. If it cannot repeal them altogether, of course it cannot repeal any part of them, or impair them, or essentially alter them, without the consent of the corporators. If, therefore, it has been shown that this college is to be regarded as a private charity, this case is embraced within the very terms of that decision. A grant of corporate powers and privileges is as much a contract as a grant of land. What proves all charters of this sort to be contracts is, that they must be accepted to give them force and effect. If they are not accepted, they are void. And in the case of

an existing corporation, if a new charter is given it, it may even accept part and reject the rest. In Rex *v.* Vice-Chancellor of Cambridge,* Lord Mansfield says: "There is a vast deal of difference between a new charter granted to a new corporation, (who must take it as it is given), and a new charter given to a corporation already in being, and acting either under a former charter or under prescriptive usage. The latter, a corporation already existing, are not obliged to accept the new charter *in toto*, and to receive either all or none of it; they may act partly under it, and partly under their old charter or prescription. The validity of these new charters must turn upon the acceptance of them." In the same case Mr. Justice Wilmot says: "It is the concurrence and acceptance of the university that gives the force to the charter of the crown." In the King *v.* Pasmore,† Lord Kenyon observes: "Some things are clear: when a corporation exists capable of discharging its functions, the crown cannot obtrude another charter upon them; they may either accept or reject it." ‡

In all cases relative to charters, the acceptance of them is uniformly alleged in the pleadings. This shows the general understanding of the law, that they are grants or contracts; and that parties are necessary to give them force and validity. In King *v.* Dr. Askew,§ it is said: "The crown cannot oblige a man to be a corporator, without his consent; he shall not be subject to the inconveniences of it, without accepting it and assenting to it." These terms, "acceptance" and "assent," are the very language of contract. In Ellis *v.* Marshal,‖ it was expressly adjudged that the naming of the defendant among others, in an act of incorporation, did not, of itself, make

* 3 Burr. 1656.
† 3 Term.Rep. 240
‡ Vide also 1 Kyd on Cor. 65.
§ 4 Burr. 2200.
‖ 2 Mass. Rep. 269.

him a corporator; and that his assent was necessary to that end. The court speak of the act of incorporation as a grant, and observe: "That a man may refuse a grant, whether from the government or an individual, seems to be a principle too clear to require the support of authorities." But Justice Buller, in King V. Pasmore, furnishes, if possible, a still more direct and explicit authority. Speaking of a corporation for government, he says: "I do not know how to reason on this point, better than in the manner urged by one of the relator's counsel, who considered the grant of incorporation to be a compact between the crown and a certain number of the subjects, the latter of whom undertake, in consideration of the privileges which are bestowed, to exert themselves for the good government of the place." This language applies with peculiar propriety and force to the case before the court. It was in consequence of the "privileges bestowed," that Dr. Wheelock and his associates undertook to exert themselves for the instruction and education of youth in this college; and it was on the same consideration that the founder endowed it with his property.

And because charters of incorporation are of the nature of contracts, they cannot be altered or varied but by consent of the original parties. If a charter be granted by the king, it may be altered by a new charter granted by the king, and accepted by the corporators. But, if the first charter be granted by parliament, the consent of parliament must be obtained to any alteration. In King V. Miller,* Lord Kenyon says, "Where a corporation takes its rise from the king's charter, the king by granting, and the corporation by accepting another charter, may alter it, because it is done with the consent of all the parties who are competent to consent to the alteration."†

* 6 Term Rep. 277.

† Vide also 2 Brown's Ch. Rep. 662, Ex parte Bolton School.

There are, in this case, all the essential constituent parts of a contract. There is something to be contracted about, there are parties, and there are plain terms in which the agreement of the parties on the subject of the contract is expressed. There are mutual considerations and inducements. The charter recites that the founder, on his part, has agreed to establish his seminary in New Hampshire, and to enlarge it beyond its original design, among other things, for the benefit of that province; and thereupon a charter is given to him and his associates, designated by himself, promising and assuring to them, under the plighted faith of the state, the right of governing the college and administering its concerns in the manner provided in the charter. There is a complete and perfect grant to them of all the power of superintendence, visitation and government. Is not this a contract? If lands or money had been granted to him and his associates, for the same purposes, such grant could not be rescinded. And is there any difference, in legal contemplation, between a grant of corporate franchises and a grant of tangible property? No such difference is recognized in any decided case, nor does it exist in the common apprehension of mankind.

It is, therefore, contended that this case falls within the true meaning of this provision of the constitution, as expounded in the decisions of this court; that the charter of 1769 is a contract, a stipulation or agreement, mutual in its considerations, express and formal in its terms, and of a most binding and solemn nature. That the acts in question impair this contract, has already been sufficiently shown. They repeal and abrogate its most essential parts.

A single observation may not be improper on the opinion of the court of New Hampshire, which has been published. The learned judges who delivered that

opinion have viewed this question in a very different light from that in which the plaintiffs have endeavored to exhibit it. After some general remarks, they assume that this college is a public corporation; and on this basis their judgment rests. Whether all colleges are not regarded as private and eleemosynary corporations, by all law writers, and all judicial decisions; whether this college was not founded by Dr. Wheelock; whether the charter was not granted at his request, the better to execute a trust, which he had already created; whether he and his associates did not become visitors, by the charter; and whether Dartmouth College be not, therefore, in the strictest sense, a private charity, are questions which the learned judges do not appear to have discussed.

It is admitted in that opinion, that, if it be a private corporation, its rights stand on the same ground as those of an individual. The great question, therefore, to be decided is, To which class of corporations do colleges thus founded belong? And the plaintiffs have endeavored to satisfy the court, that, according to the well-settled principles and uniform decisions of law, they are private, eleemosynary corporations.

Much has heretofore been said on the necessity of admitting such a power in the legislature as has been assumed in this case. Many cases of possible evil have been imagined, which might otherwise be without remedy. Abuses, it is contended, might arise in the management of such institutions, which the ordinary courts of law would be unable to correct. But this is only another instance of that habit of supposing extreme cases, and then of reasoning from them, which is the constant refuge of those who are obliged to defend a cause, which, upon its merits, is indefensible. It would be sufficient to say in answer, that it is not pretended that there was here any such case of necessity. But a still more satisfactory an-

swer is, that the apprehension of danger is groundless, and therefore, the whole argument fails. Experience has not taught us that there is danger of great evils or of great inconvenience from this source. Hitherto, neither in our own country nor elsewhere have such cases of necessity occurred. The judicial establishments of the state are presumed to be competent to prevent abuses and violations of trust, in cases of this kind, as well as in all others. If they be not, they are imperfect, and their amendment would be a most proper subject for legislative wisdom. Under the government and protection of the general laws of the land, these institutions have always been found safe, as well as useful. They go on, with the progress of society, accommodating themselves easily, without sudden change or violence, to the alterations which take place in its condition, and in the knowledge, the habits, and pursuits of men. The English colleges were founded in Catholic ages. Their religion was reformed with the general reformation of the nation; and they are suited perfectly well to the purpose of educating the Protestant youth of modern times. Dartmouth College was established under a charter granted by the provincial government; but a better constitution for a college, or one more adapted to the condition of things under the present government, in all material respects, could not now be framed. Nothing in it was found to need alteration at the revolution. The wise men of that day saw in it one of the best hopes of future times, and commended it as it was, with parental care, to the protection and guardianship of the government of the state. A charter of more liberal sentiments, of wiser provisions, drawn with more care, or in a better spirit, could not be expected at any time or from any source. The college needed no change in its organization or government. That which it did need was the kindness, the patronage, the bounty of the legisla-

ture; not a mock elevation to the character of a university, without the solid benefit of a shilling's donation to sustain the character; not the swelling and empty authority of establishing institutes and other colleges. This unsubstantial pageantry would seem to have been in derision of the scanty endowment and limited means of an unobtrusive, but useful and growing seminary. Least of all, was there a necessity, or pretense of necessity, to infringe its legal rights, violate its franchises and privileges, and pour upon it these overwhelming streams of litigation.

But this argument, from necessity, would equally apply in all other cases. If it be well founded, it would prove, that, whenever any inconvenience or evil is experienced from the restrictions imposed on the legislature by the constitution, these restrictions ought to be disregarded. It is enough to say that the people have thought otherwise. They have most wisely chosen to take the risk of occasional inconvenience from the want of power, in order that there might be a settled limit to its exercise, and a permanent security against its abuse. They have imposed prohibitions and restraints; and they have not rendered these altogether vain and nugatory by conferring the power of dispensation. If inconvenience should arise which the legislature cannot remedy under the power conferred upon it, it is not answerable for such inconvenience. That which it cannot do within the limits prescribed to it, it cannot do at all. No legislature in this country is able, and may the time never come when it shall be able, to apply to itself the memorable expression of a Roman pontiff: "*Licet hoc* DE JURE *non possumus, volumus tamen* DE PLENITUDINE POTESTATIS."

The case before the court is not of ordinary importance, nor of every-day occurrence. It affects not this college only, but every college, and all the literary institutions of

the country. They have flourished hitherto, and have become, in a high degree, respectable and useful to the community. They have all a common principle of existence, the inviolability of their charters. It will be a dangerous, a most dangerous experiment, to hold these institutions subject to the rise and fall of popular parties, and the fluctuations of political opinions. If the franchise may be at any time taken away, or impaired, the property, also, may be taken away, or its use perverted. Benefactors will have no certainty of effecting the object of their bounty; and learned men will be deterred from devoting themselves to the service of such institutions, from the precarious title of their offices. Colleges and halls will be deserted by all better spirits, and become a theater for the contentions of politics. Party and faction will be cherished in the places consecrated to piety and learning. These consequences are neither remote nor possible only. They are certain and immediate.

When the court in North Carolina declared the law of the state, which repealed a grant to its university, unconstitutional and void, the legislature had the candor and the wisdom to repeal the law. This example, so honorable to the state which exhibited it, is most fit to be followed on this occasion. And there is good reason to hope that a state which has hitherto been so much distinguished for temperate counsels, cautious legislation, and regard to law, will not fail to adopt a course which will accord with her highest and best interests, and in no small degree elevate her reputation.

It was, for many and obvious reasons, most anxiously desired that the question of the power of the legislature over this charter, should have been finally decided in the state court. An earnest hope was entertained that the judges of that court might have viewed the case in a light favorable to the rights of the trustees. That hope has

failed. It is here that those rights are now to be maintained, or they are prostrated forever. *Omnia alia perfugia bonorum, sub sidia, consilia, auxilia, jura ceciderunt. Quem enim alium appellem? quem obtester? quem implorem? Nisi hoc loco, nisi apud vos, nisi per vos, judices, salutem nostram, quæ spe exigua extremaque pendet, tenuerimus; nihil est præterea quo confugere possimus.*

PLYMOUTH ORATION.

FIRST SETTLEMENT OF NEW ENGLAND.

PLYMOUTH ORATION.*

Discourse in Commemoration of The First Settlement of New England Delivered at Plymouth, on the 22d Day of December, 1820.

Let us rejoice that we behold this day. Let us be thankful that we have lived to see the bright and happy breaking of the auspicious morn, which commences the third century of the history of New England. Auspicious, indeed—bringing a happiness beyond the common allotment of Providence to men—full of present joy, and gilding with bright beams the prospect of futurity, is the dawn that awakens us to the commemoration of the landing of the Pilgrims.

Living at an epoch which naturally marks the progress of the history of our native land, we have come hither to celebrate the great event with which that history commenced. Forever honored be this, the place of our fathers' refuge! Forever remembered the day which saw them, weary and distressed, broken in everything but spirit, poor in all but faith and courage, at last secure from the dangers of wintry seas, and impressing this shore with the first footsteps of civilized man!

*The master-piece next in the order of time is the following, which was pronounced on the 22d of December, 1820, at the first anniversary celebration of the Landing of the Pilgrims at Plymouth Rock, two hundred years from the date of that event. At the time of its delivery, it was universally regarded as the most eloquent address ever uttered on this continent; and certainly nothing equal to it has since appeared, excepting what Mr. Webster has produced. On the day it was delivered the orator was nearly *thirty-eight* years of age.

It is a noble faculty of our nature which enables us to connect our thoughts, our sympathies, and our happiness with what is distant in place or time; and, looking before and after, to hold communion at once with our ancestors and our posterity. Human and mortal although we are, we are nevertheless not mere insulated beings, without relation to the past or the future. Neither the point of time, nor the spot of earth, in which we physically live, bounds our rational and intellectual enjoyments. We live in the past by a knowledge of its history; and in the future by hope and anticipation. By ascending to an association with our ancestors; by contemplating their example and studying their character; by partaking their sentiments, and imbibing their spirit; by accompanying them in their toils, by sympathizing in their sufferings, and rejoicing in their successes and their triumphs; we mingle our own existence with theirs and seem to belong to their age. We become their co-temporaries, live the lives which they lived, endure what they endured, and partake in the rewards which they enjoyed. And in like manner, by running along the line of future time, by contemplating the probable fortunes of those who are coming after us, by attempting something which may promote their happiness, and leave some not dishonorable memorial of ourselves for their regard, when we shall sleep with the fathers, we protract our own earthly being, and seem to crowd whatever is future, as well as all that is past, into the narrow compass of our earthly existence. As it is not a vain and false, but an exalted and religious imagination, which leads us to raise our thoughts from the orb, which, amidst this universe of worlds, the Creator has given us to inhabit, and to send them with something of the feeling which nature prompts, and teaches to be proper among children of the same Eternal Parent, to the contemplation of the myriads of

fellow-beings, with which his goodness has peopled the infinite of space; so neither is it false or vain to consider ourselves as interested and connected with our whole race, through all time; allied to our ancestors; allied to our posterity; closely compacted on all sides with others; ourselves being but links in the great chain of being, which begins with the origin of our race, runs onward through its successive generations, binding together the past, the present, and the future, and terminating at last, with the consummation of all things earthly, at the throne of God.

There may be, and there often is, indeed, a regard for ancestry, which nourishes only a weak pride; as there is also a care for posterity, which only disguises an habitual avarice, or hides the workings of a low and groveling vanity. But there is also a moral and philosophical respect for our ancestors, which elevates the character and improves the heart. Next to the sense of religious duty and moral feeling, I hardly know what should bear with stronger obligation on a liberal and enlightened mind, than a consciousness of alliance with excellence which is departed; and a consciousness, too, that in its acts and conduct, and even in its sentiments and thoughts, it may be actively operating on the happiness of those who come after it. Poetry is found to have few stronger conceptions, by which it would affect or overwhelm the mind, than those in which it presents the moving and speaking image of the departed dead to the senses of the living. This belongs to poetry, only because it is congenial to our nature. Poetry is, in this respect, but the handmaid of true philosophy and morality; it deals with us as human beings, naturally reverencing those whose visible connection with this state of existence is severed, and who may yet exercise we know not what sympathy with ourselves; and when it carries us forward, also, and shows us the

long continued result of all the good we do, in the prosperity of those who follow us, till it bears us from ourselves, and absorbs us in an intense interest for what shall happen to the generations after us, it speaks only in the language of our nature, and affects us with sentiments which belong to us as human beings.

Standing in this relation to our ancestors and our posterity, we are assembled on this memorable spot, to perform the duties which that relation and the present occasion imposes upon us. We have come to this Rock, to record here our homage for our Pilgrim Fathers; our sympathy in their sufferings; our gratitude for their labors; our admiration of their virtues; our veneration for their piety; and our attachment to those principles of civil and religious liberty, which they encountered the dangers of the ocean, the storms of heaven, the violence of savages, disease, exile, and famine, to enjoy and establish. And we would leave here, also, for the generations which are rising up rapidly to fill our places, some proof that we have endeavored to transmit the great inheritance unimpaired; that in our estimate of public principles and private virtue, in our veneration of religion and piety, in our devotion to civil and religious liberty, in our regard for whatever advances human knowledge or improves human happiness, we are not altogether unworthy of our origin.

There is a local feeling connected with this occasion, too strong to be resisted; a sort of *genius of the place*, which inspires and awes us. We feel that we are on the spot where the first scene of our history was laid; where the hearths and altars of New England were first placed; where Christianity, and civilization, and letters made their first lodgment, in a vast extent of country, covered with a wilderness, and peopled by roving barbarians. We are here, at the season of the year at which the event took place. The imagination irresistibly and rapidly draws around us

the principal features and the leading characters in the original scene. We cast our eyes abroad on the ocean, and we see where the little bark, with the interesting group upon its deck, made its slow progress to the shore. We look around us, and behold the hills and promontories where the anxious eyes of our fathers first saw the places of habitation and of rest. We feel the cold which benumbed, and listen to the winds which pierced them. Beneath us is the Rock, on which New England received the feet of the Pilgrims. We seem even to behold them, as they struggle with the elements, and, with toilsome efforts, gain the shore. We listen to the chiefs in council; we see the unexampled exhibition of female fortitude and resignation; we hear the whisperings of youthful impatience, and we see, what a painter of our own has also represented by his pencil, chilled and shivering childhood, houseless, but for a mother's arms, couchless, but for a mother's breast, till our own blood almost freezes. The mild dignity of Carver and of Bradford; the decisive and soldier-like air and manner of Standish; the devout Brewster; the enterprising Allerton; the general firmness and thoughtfulness of the whole band; their conscious joy for dangers escaped; their deep solicitude about dangers to come; their trust in Heaven; their high religious faith, full of confidence and anticipation; all these seem to belong to this place, and to be present upon this occasion, to fill us with reverence and admiration.

The settlement of New England by the colony which landed here on the twenty-second of December, sixteen hundred and twenty, although not the first European establishment in what now constitutes the United States, was yet so peculiar in its causes and character, and has been followed and must still be followed by such consequences, as to give it a high claim to lasting commemoration. On these causes and consequences, more than on

its immediately attendant circumstances, its importance, as an historical event, depends. Great actions and striking occurrences, having excited a temporary admiration, often pass away and are forgotten, because they leave no lasting results, affecting the prosperity and happiness of communities. Such is frequently the fortune of the most brilliant military achievements. Of the ten thousand battles which have been fought, of all the fields fertilized with carnage, of the banners which have been bathed in blood, of the warriors who have hoped that they had risen from the field of conquest to a glory as bright and as durable as the stars, how few that continue long to interest mankind! The victory of yesterday is reversed by the defeat of to-day; the star of military glory, rising like a meteor, like a meteor has fallen; disgrace and disaster hang on the heels of conquest and renown; victor and vanquished presently pass away to oblivion, and the world goes on in its course, with the loss only of so many lives and so much treasure.

But if this be frequently, or generally, the fortune of military achievements, it is not always so. There are enterprises, military as well as civil, which sometimes check the current of events, give a new turn to human affairs, and transmit their consequences through ages. We see their importance in their results, and call them great, because great things follow. There have been battles which have fixed the fate of nations. These come down to us in history with a solid and permanent interest, not created by a display of glittering armor, the rush of adverse battalions, the sinking and rising of pennons, the flight, the pursuit, and the victory; but by their effect in advancing or retarding human knowledge, in overthrowing or establishing despotism, in extending or destroying human happiness. When the traveler pauses on the plain of Marathon, what are the emotions which most strongly agitate

his breast? What is that glorious recollection which thrills through his frame and suffuses his eyes? Not, I imagine, that Grecian skill and Grecian valor were here most signally displayed; but that Greece herself was here saved. It is because to this spot, and to the event which has rendered it immortal, he refers all the succeeding glories of the republic. It is because, if that day had gone otherwise, Greece had perished. It is because he perceives that her philosophers and orators, her poets and painters, her sculptors and architects, her governments and free institutions, point backward to Marathon, and that their future existence seems to have been suspended on the contingency, whether the Persian or the Grecian banner should wave victorious in the beams of that day's setting sun. And, as his imagination kindles at the retrospect, he is transported back to the interesting moment; he counts the fearful odds of the contending hosts; his interest for the result overwhelms him; he trembles, as if it were still uncertain, and seems to doubt whether he may consider Socrates and Plato, Demosthenes, Sophocles, and Phidias, as secure, yet, to himself and to the world.

"If we conquer," said the Athenian commander, on the morning of that decisive day, "if we conquer, we shall make Athens the greatest city of Greece." A prophecy, how well fulfilled! "If God prosper us," might have been the more appropriate language of our fathers, when they landed upon this Rock, "if God prosper us, we shall here begin a work which shall last for ages; we shall plant here a new society, in the principles of the fullest liberty and the purest religion; we shall subdue this wilderness which is before us; we shall fill this region of the great continent, which stretches almost from pole to pole with civilization and Christianity; the temples of the true God shall rise, where now ascends the smoke of idolatrous sacrifice; fields and gardens, the flowers of summer, and

the waving and golden harvest of autumn, shall extend over a thousand hills, and stretch along a thousand valleys, never yet, since the creation, reclaimed to the use of civilized man. We shall whiten this coast with the canvas of a prosperous commerce; we shall stud the long and winding shore with a hundred cities. That which we sow in weakness shall be raised in strength. From our sincere, but houseless worship, there shall spring splendid temples to record God's goodness; from the simplicity of our social union, there shall arise wise and politic constitutions of government, full of the liberty which we ourselves bring and breathe; from our zeal for learning, institutions shall spring which shall scatter the light of knowledge throughout the land, and, in time, paying back where they have borrowed, shall contribute their part to the great aggregate of human knowledge; and our descendants, through all generations, shall look back to this spot, and to this hour, with unabated affection and regard."

A brief remembrance of the causes which led to the settlement of this place; some account of the peculiarities and characteristic qualities of that settlement, as distinguished from other instances of colonization; a short notice of the progress of New England in the great interests of society, during the century which is now elapsed; with a few observations on the principles upon which society and government are established in this country; comprise all that can be attempted, and much more than can be satisfactorily performed, on the present occasion.

Of the motives which influenced the first settlers to a voluntary exile, induced them to relinquish their native country, and to seek an asylum in this then unexplored wilderness, the first and principal, no doubt, were connected with religion. They sought to enjoy a higher degree of religious freedom, and what they esteemed a

purer form of religious worship, than was allowed to their choice, or presented to their imitation, in the Old World. The love of religious liberty is a stronger sentiment, when fully excited, than an attachment to civil or political freedom. That freedom which the conscience demands, and which men feel bound by their hopes of salvation to contend for, can hardly fail to be attained. Conscience, in the cause of religion and the worship of the Deity, prepares the mind to act and to suffer beyond almost all other causes. It sometimes gives an impulse so irresistible, that no fetters of power or of opinion can withstand it. History instructs us that this love of religious liberty, a compound sentiment in the breast of man, made up of the clearest sense of right and the highest conviction of duty, is able to look the sternest despotism in the face, and, with means apparently most inadequate, to shake principalities and powers. There is a boldness, a spirit of daring, in religious reformers, not to be measured by the general rules which control men's purposes and actions. If the hand of power be laid upon it, this only seems to augment its force and its elasticity, and to cause its action to be more formidable and violent. Human invention has devised nothing, human power has compassed nothing, that can forcibly restrain it, when it breaks forth. Nothing can stop it, but to give way to it; nothing can check it, but indulgence. It loses its power only when it has gained its object. The principle of toleration to which the world has come so slowly, is at once the most just and the most wise of all principles. Even when religious feeling takes a character of extravagance and enthusiasm, and seems to threaten the order of society and shake the columns of the social edifice, its principal danger is in its restraint. If it be allowed indulgence and expansion, like the elemental fires, it only agitates, and perhaps purifies, the atmosphere; while its

efforts to throw off restraint would burst the world asunder.

It is certain, that, although many of them were republicans in principle, we have no evidence that our New England ancestors would have emigrated, as they did, from their own native country, become wanderers in Europe, and finally undertaken the establishment of a colony here, merely from their dislike of the political systems of Europe. They fled not so much from the civil government, as from the hierarchy, and the laws which enforced conformity to the church establishment. Mr. Robinson had left England as early as sixteen hundred and eight, on account of the persecutions for non-conformity, and had retired to Holland. He left England, from no disappointed ambition in affairs of state, from no regrets at the want of preferment in the church, nor from any motive of distinction or of gain. Uniformity in matters of religion was pressed with such extreme rigor, that a voluntary exile seemed the most eligible mode of escaping from the penalties of non-compliance. The accession of Elizabeth had, it is true, quenched the fires of Smithfield, and put an end to the easy acquisition of the crown of martyrdom. Her long reign had established the reformation, but toleration was a virtue beyond her conception, and beyond the age. She left no example of it to her successor; and he was not of a character which rendered it probable that a sentiment either so wise or so liberal should originate with him. At the present period it seems incredible, that the learned, accomplished, unassuming, and inoffensive Robinson should neither be tolerated in his peaceable mode of worship in his own country, nor suffered quietly to depart from it. Yet such was the fact. He left his country by stealth, that he might elsewhere enjoy those rights which ought to belong to men in all countries. The embarkation of the Pilgrims

for Holland is deeply interesting, from its circumstances, and also as it marks the character of the times, independently of its connection with names now incorporated with the history of empire. The embarkation was intended to be in the night, that it might escape the notice of the officers of government. Great pains had been taken to secure boats, which should come undiscovered to the shore, and receive the fugitives ; and frequent disappointments had been experienced in this respect. At length the appointed time came, bringing with it unusual severity of cold and rain. An unfrequented and barren heath, on the shores of Lincolnshire, was the selected spot, where the feet of the Pilgrims were to tread, for the last time, the land of their fathers.

The vessel which was to receive them did not come until the next day, and in the mean time the little band was collected, and men and women and children and baggage were crowded together, in melancholy and distressed confusion. The sea was rough, and the women and children already sick, from their passage down the river to the place of embarkation. At length the wished-for boat silently and fearfully approaches the shore, and men and women and children, shaking with fear and with cold, as many as the small vessel could bear, venture off on a dangerous sea. Immediately the advance of horses is heard from behind, armed men appear, and those not yet embarked are seized, and taken into custody. In the hurry of the moment, there had been no regard to the keeping together of families, in the first embarkation, and on account of the appearance of the horsemen, the boat never returned for the residue. Those who had got away, and those who had not, were in equal distress.

A storm of great violence, and long duration, arose at sea, which not only protracted the voyage, rendered distressing by the want of all those accommodations which

the interruption of the embarkation had occasioned, but also forced the vessel out of her course, and menaced immediate shipwreck; while those on shore, when they were dismissed from the custody of the officers of justice, having no longer homes or houses to retire to, and their friends and protectors being already gone, became objects of necessary charity, as well as of deep commiseration.

As this scene passes before us, we can hardly forbear asking, whether this be a band of malefactors and felons flying from justice. What are their crimes, that they hide themselves in darkness? To what punishment are they exposed that, to avoid it, men, and women and children, thus encounter the surf of the North Sea, and the terrors of a night storm? What induces this armed pursuit, and this arrest of fugitives, of all ages and both sexes? Truth does not allow us to answer these inquiries in a manner that does credit to the wisdom or the justice of the times. This was not the flight of guilt, but of virtue. It was an humble and peaceable religion, flying from causeless oppression. It was conscience, attempting to escape from the arbitrary rule of the Stuarts. It was Robinson and Brewster, leading off their little band from their native soil, at first to find shelter on the shores of the neighboring continent, but ultimately to come hither; and having surmounted all difficulties and braved a thousand dangers, to find here a place of refuge and of rest. Thanks be to God, that this spot was honored as the asylum of religious liberty! May its standard, reared here, remain forever! May it rise up as high as heaven till its banner shall fan the air of both continents, and wave as a glorious ensign of peace and security to the nations!

The peculiar character, condition, and circumstances of the colonies which introduced civilization and an English race into New England, afford a most interesting and ex-

tensive topic of discussion. On these, much of our subsequent character and fortune has depended. Their influence has essentially affected our whole history, through the two centuries which have elapsed, and as they have become intimately connected with government, laws, and property, as well as with our opinions on the subject of religion and civil liberty, that influence is likely to continue to be felt through the centuries which shall succeed. Emigration from one region to another, and the emission of colonies to people countries more or less distant from the residence of the parent stock, are common incidents in the history of mankind; but it has not often, perhaps never, happened, that the establishment of colonies should be attempted under circumstances, however beset with present difficulties and dangers, yet so favorable to ultimate success, and so conducive to magnificent results, as those which attended the first settlements on this part of the continent. In other instances, emigration has proceeded from a less exalted purpose, in a period of less general intelligence, or more without plan and by accident; or under circumstances, physical and moral, less favorable to the expectation of laying a foundation for great public prosperity and future empire.

A great resemblance exists, obviously, between all the English colonies established within the present limits of the United States; but the occasion attracts our attention more immediately to those which took possession of New England, and the peculiarities of these furnish a strong contrast with most other instances of colonization.

Among the ancient nations, the Greeks, no doubt, sent forth from their territories the greatest number of colonies. So numerous, indeed, were they, and so great the extent of space over which they were spread, that the parent country fondly and naturally persuaded herself, that by means of them she had laid a sure foundation for

the universal civilization of the world. These establishments, from obvious causes, were most numerous in places most contiguous; yet they were found on the coasts of France, on the shores of the Euxine Sea in Africa, and even, as is alleged, on the borders of India. These emigrations appear to have been sometimes voluntary and sometimes compulsory; arising from the spontaneous enterprise of individuals, or the order and regulation of government. It was a common opinion with ancient writers, that they were undertaken in religious obedience to the commands of oracles, and it is probable that impressions of this sort might have had more or less influence; but it is probable, also, that on these occasions the oracle did not speak a language dissonant from the views and purposes of the state.

Political science among the Greeks seems never to have extended to the comprehension of a system, which should be adequate to the government of a great nation upon principles of liberty. They were accustomed only to the contemplation of small republics, and were led to consider an augmented population as incompatible with free institutions. The desire of a remedy for this supposed evil, and the wish to establish marts for trade, led the governments often to undertake the establishment of colonies as an affair of state expediency. Colonization and commerce, indeed, would naturally become objects of interest to an ingenious and enterprising people, inhabiting a territory closely circumscribed in its limits, and in no small part mountainous and sterile; while the islands of the adjacent seas, and the promontories and coasts of the neighboring continents, by their mere proximity, strongly solicited the excited spirit of emigration. Such was this proximity, in many instances, that the new settlements appeared rather to be the mere extension of population over contiguous territory, than the establishment of

distant colonies. In proportion as they were near to the parent state, they would be under its authority, and partake of its fortunes. The colony at Marseilles might perceive lightly, or not at all, the sway of Phocis; while the islands in the Ægean Sea could hardly attain to independence of their Athenian origin. Many of these establishments took place at an early age; and if there were defects in the governments of the parent states, the colonists did not possess philosophy or experience sufficient to correct such evils in their own institutions, even if they had not been, by other causes, deprived of the power. An immediate necessity, connected with the support of life, was the main and direct inducement to these undertakings, and there could hardly exist more than the hope of a successful imitation of institutions with which they were already acquainted, and of holding an equality with their neighbors in the course of improvement. The laws and customs, both political and municipal, as well as the religious worship of the parent city, were transferred to the colony; and the parent city herself, with all such of her colonies as were not too far remote for frequent intercourse and common sentiments, would appear like a family of cities, more or less dependent, and more or less connected. We know how imperfect this system was, as a system of general politics, and what scope it gave to those mutual dissensions and conflicts which proved so fatal to Greece.

But it is more pertinent to our present purpose to observe, that nothing existed in the character of Grecian emigration, or in the spirit and intelligence of the emigrants, likely to give a new and important direction to human affairs, or a new impulse to the human mind. Their motives were not high enough, their views were not sufficiently large and prospective. They went not forth, like our ancestors, to erect systems of more perfect